

MISSOURI CLEAN WATER COMMISSION MEETING
November 28, 2001
Governor Office Building, Jefferson City, Missouri

MINUTES

Present

Thomas A. Herrmann, Chairman, Missouri Clean Water Commission
Davis E. Minton, Vice-Chairman, Missouri Clean Water Commission
Janice Greene, Commissioner, Missouri Clean Water Commission
Arthur E. Hegi, Commissioner, Missouri Clean Water Commission
Cosette D. Kelly, Commissioner, Missouri Clean Water Commission
Kristin M. Perry, Commissioner, Missouri Clean Water Commission

Brian T. Allen, PWSD #2 of Jefferson County, High Ridge, Missouri
Terry Ball, Assistant Attorney General, Jefferson City, Missouri
Darrell Barber, Department of Natural Resources, Jefferson City, Missouri
Joseph Berry, Department of Natural Resources, Jefferson City, Missouri
Bill Breeden, Chillicothe Municipal Utilities, Chillicothe, Missouri
Robert Brundage, Premium Standard Farms/MoAG, Princeton, Missouri
Bill Bryan, Assistant Attorney General, Jefferson City, Missouri
John Bryan, The Poultry Federation, Jefferson City, Missouri
Randy Clarkson, Department of Natural Resources, Jefferson City, Missouri
Ann Crawford, Department of Natural Resources, Jefferson City, Missouri
Mike Duvall, St. Charles County Gov't Environmental Services, St. Charles, Missouri
Tim Eiken, Department of Natural Resources, Jefferson City, Missouri
Gerald Feller, Missouri Public Utilities Alliance, Columbia, Missouri
Carol Garey, Department of Natural Resources, Jefferson City, Missouri
Ted Heisel, Missouri Coalition for the Environment, St. Louis, Missouri
Darlene Helmig, Department of Natural Resources, Jefferson City, Missouri
Mike Hoffmann, Department of Conservation, Jefferson City, Missouri
John Howland, Midwest Environmental Consultants, Jefferson City, Missouri
Frederick J. Hutson, Department of Natural Resources, Jefferson City, Missouri
Malinda King, Acting Secretary, Missouri Clean Water Commission
John Knudsen, Department of Natural Resources, Jefferson City, Missouri
Richard J. Laux, Department of Natural Resources, Jefferson City, Missouri
Mark Lenox, Department of Natural Resources, Jefferson City, Missouri
Tony Lerde, O&M Enterprises, Holden, Missouri
Terry McQueary, Kansas City Water Services, Kansas City, Missouri
John Madras, Department of Natural Resources, Jefferson City, Missouri
Dennis Mason, O&M Enterprises, Holden, Missouri
Kevin Mohammadi, Department of Natural Resources, Jefferson City, Missouri
Alan Moreau, Department of Natural Resources, Jefferson City, Missouri
Deborah Neff, Assistant Attorney General, Jefferson City, Missouri
Sara Parker, Department of Natural Resources, Jefferson City, Missouri

Kevin Perry, REGFORM, Jefferson City, Missouri
Bernie Rains, Metropolitan St. Louis Sewer District, St. Louis, Missouri
Mary Ann Redden, Department of Natural Resources, Jefferson City, Missouri
Joy Reven, Department of Natural Resources, Jefferson City, Missouri
Cory Ridenhour, Missouri Forest Products Association, Jefferson City, Missouri
Brad Rigby, Rigby Bunkhouse Motel, Lincoln, Missouri
Phil Schroeder, Department of Natural Resources, Jefferson City, Missouri
David Shorr, Tom Johns Construction, Jefferson City, Missouri
Matt Sikes, Department of Natural Resources, Jefferson City, Missouri
Kent A. Spainhour, Chillicothe Municipal Utilities, Chillicothe, Missouri
Terry Spence, Unionville, Missouri
Layli Terrill, Department of Natural Resources, Jefferson City, Missouri
Melody Torrey, Stream Team 714, Unionville, Missouri
Scott B. Totten, Department of Natural Resources, Jefferson City, Missouri
Steve Townley, Department of Natural Resources, Jefferson City, Missouri
Michael Warrick, Department of Natural Resources, Jefferson City, Missouri
Llona C. Weiss, Department of Natural Resources, Jefferson City, Missouri
Bob Williamson, Kansas City Water Services, Kansas City, Missouri
Jill Friedman Wilson, Holnam, Inc., St. Louis, Missouri
Leanna Zweig, Department of Conservation, Columbia, Missouri

Chairman Herrmann called the meeting to order at approximately 9:10 a.m. and introduced Commissioners Kelly, Minton, Hegi, Perry; and Greene and Engineering Section Chief, Randy Clarkson; Acting Secretary, Malinda King, and Assistant Attorney General, Deborah Neff.

Administrative Matters

Public Hearing on Proposed Rulemaking

All witnesses were sworn in by the court reporter to testify at a public hearing held on a Proposed Amendment to 10 CSR 20-6.200 Storm Water Regulations and Chapter 15 Aboveground Storage Tanks Release Response Proposed Rules. A transcript of this hearing will be available for review at the office of the Missouri Clean Water Commission, Jefferson State Office Building, 205 Jefferson Street, Jefferson City, Missouri.

Introduction

Scott Totten, Interim Director of the Water Pollution Control Program and Director of the Water Protection and Soil Conservation Division, introduced the division's deputy director, Michael Warrick.

Theodosia

Steve Townley, Chief of the Water Pollution Control Program Financial Services Section, reported the community of Theodosia has submitted a request to adjust its funding allocations from the FY 2002 Intended Use Plan. The community is able to access funds through four of the department's grant and loan programs. The community had also accessed funds through the Community Development Block Grant Program. Mr. Townley stated all of these funding sources were necessary in order to get an affordable system for the community.

In trying to consolidate and streamline the work the community asked that staff shift some of the funding sources and reduce the number of programs they would be participating in. Rather than receiving one million dollars under the Forty Percent Grant Program, the community proposed receiving that money under the Hardship Grant Program. Mr. Townley reported \$3.7 million uncommitted available in the Hardship Grant & Loan Program at this time. The \$3.7 million was held in an uncommitted reserve pending the Table Rock Acres project which was on the Contingency List for \$301,000.

A new program was initiated for all of those projects that were not going to be fundable under the Forty Percent Grant Contingency List for the foreseeable future. The communities of Lewistown and Bates City will be accessing funds through this program. Mr. Townley stated there are sufficient funds uncommitted to honor Theodosia's request. Another benefit of the community's request is that by shifting the funding source, \$1 million of Forty Percent Grant funds is made available. This combined with the \$144,000 that's uncommitted in the Forty Percent Grant Program at this time could then be allocated in priority point order to the communities of Freeburg, Centertown, and Blairstown. Mr. Townley recommended approving the funding shift for Theodosia and moving the three communities to the Forty Percent Grant Fundable list.

Responding to Commissioner Hegi's question, Mr. Townley stated Theodosia is incorporated as a village within state statutes.

Commissioner Hegi asked why this community is any poorer than the rest of the villages on Table Rock Lake.

Joy Reven, Financial Services Section project coordinator, responded that Theodosia applied for the grant program and they are a very poor community with very high unemployment. She noted other communities might be eligible but they did not apply.

Commissioner Hegi asked what the population of the community is.

Ms. Reven responded there are 186 connections.

Commissioner Hegi congratulated staff and noted there was an excellent program at the Upper White River Basin meeting that occurred in Springfield. He asked what type of system Theodosia will be using.

Ms. Reven replied the community will install pumps and have one circulating sand filter.

Commissioner Hegi asked if the community looked into any alternative systems.

Mr. Townley replied this technology is alternative. He continued that typically in these small communities lagoons or something of that nature would be used but this technology was proven to be cheaper.

Randy Clarkson, Chief of the Water Pollution Control Program Engineering Section, stated recirculating sand filter technology was developed through the EPA innovative and alternative program. He noted the first recirculating sand filters in Missouri were developed about 20 to 25 years ago with the first systems being installed in the St. Louis area. Mr. Clarkson reported Missouri is ahead of the curve by using this system. The community will be required to look at other options but this is an alternative system.

Commissioner Hegi noted there will be a video available shortly from the White River Basin meeting and he encouraged anyone with an interest in this subject to obtain a copy of the video. He continued that the Kimberling City Chamber of Commerce is getting a \$2 million grant to build alternative systems that are to be cheaper to construct and operate. Septic tanks and lateral lines continue to be put in and pollution of the lake continues. He questioned why they would spend \$2 million to build and demonstrate all these alternative systems if they don't work.

Mr. Clarkson noted staff stays current on these issues. Missouri was one of the more successful states in dealing with EPA's alternative technology program. Mr. Clarkson noted it took a lot of innovation on staff's part to help monitor the way systems are built to make this successful. He continued that staff has studied wetlands systems and understand where they are applicable. The recirculating sand filter along with some land application methods are the best examples of alternative systems that are successful. Mr. Clarkson noted on-site systems are under the authority of the Department of Health which is not under the commission's jurisdiction.

Commissioner Hegi stated there is a recirculating sand filter near a school and the E-coli is very high.

Mr. Clarkson noted that is a matter of whether or not they are disinfecting.

Commissioner Hegi stated the phosphate load in Southwest Missouri is twice as much as there is a place to put it. He asked if staff has looked at the alternative systems that are purported to be cheaper than some of the other systems.

Mr. Clarkson replied the proposed system is a very successfully proven alternative system.

Mr. Townley explained the funding adjustment as requested by Chairman Herrmann. Elevating the projects of Freeburg, Centerville and Blainstown will leave an uncommitted balance in the Forty Percent Grant program of \$223,086.

Commissioner Perry noted a good job has been done to reallocate funds so more communities can obtain funding. She continued that the other issue is whether the most efficient use of those funds is being made. Commissioner Perry asked if each one of these programs is evaluated for the best and cheapest way to complete each project.

Mr. Townley explained there are two processes are ongoing. The Missouri Water and Wastewater Review Committee screens applicants and reaches a consensus on the appropriate financing package, local costs and local commitment, and the appropriate technology for the project. Facility plans are then reviewed by Water Pollution Control Program engineering staff to ensure costs are appropriate and that the design meets design criteria and regulations.

Ms. Reven stated this is a very expensive project because Theodosia is tremendously hilly and rocky and is right on the edge of Bull Shoals Lake. She continued that the project was approved on the Intended Use Plan two years ago and the community just wants to shift the funding at this time.

Commissioner Greene moved to **accept the staff recommendation to fund the Theodosia project through the Hardship Grant and Loan Program**; seconded by Commissioner Kelly and passed with Commissioner Hegi voting against.

Update on Status of Special Infrastructure Grant Funds

Mr. Townley reported there was quite a bit of focus at the last meeting on the Special Infrastructure Grant Program providing an increase to one of the projects. He noted staff believes it is prudent to provide periodic updates to the commission on the current status of projects.

Bids have been opened on the Exeter project. It was anticipated there was a need for \$252,000 but bids came in lower and only \$189,000 will be needed. This recovers \$63,348 to be added to the uncommitted balance for a total of \$497,688. Project increases will be addressed with these funds. Mr. Townley added that the community of Branson West is on the Contingency List for approximately one million dollars.

Chairman Herrmann asked if there was a schedule for the other five projects listed.

Mr. Townley responded he is not aware of these schedules. He noted bids are out on Nixa and that is the only project that he is aware of that is actively proceeding with the bidding phase of its project.

Chairman Herrmann asked for anticipated dates for these projects at the next meeting.

Intended Use Plan Presentation

Mr. Townley reported the fall financing has just been completed. Financing has been provided to 21 communities. There were 23 loans with one community applying for wastewater and drinking water funding. \$90 million was made available to clean water participants and \$22 million was made available to drinking water participants. Mr. Townley stated Missouri communities have received over one billion dollars worth of financing through the State Revolving Fund over the last 11 years. This has saved communities well over \$100 million compared to conventional financing allowing money to stay in the communities providing economic benefits.

Mr. Townley reported November 15 is the deadline for applications for all of the Intended Use Plan programs with the exception of the Rural Water and Sewer Grant program. This is a department program used principally to offset local project costs where needed.

A small community borrower program will be added to the Intended Use Plan this year. This program will encompass communities with less than 1,000 population who need \$100,000 or less to complete a significant portion of their water or wastewater needs. Mr. Townley stated this will be for situations where there is almost an emergency situation. It will be a bond oriented program but, if communities want to proceed with notes or other securities, staff will entertain that.

Applications are received in the Water Pollution Control Program and reviewed by the Planning Section and priority points are assigned to the applicants.

The main goal of the Missouri Water and Wastewater Review Committee is to review the appropriate technology and financing on behalf of the three major funding vehicles: rural development, the Block Grant Program and the Department of Natural Resources water and wastewater programs. Mr. Townley reported there is a tremendous amount of available financing approaching \$100 million a year through these three entities available to communities on a statewide basis. Staff ensures that communities have equal access to funding and that they are all competing on an equal foundation with other communities around them and all paying relatively the same amount of money. Staff is focused on the two percent median household income level as a benchmark for the typical 5,000 gallon per month user. Mr. Townley stated some areas of the state have user charges in the high teens to low twenties and other areas approach \$40 per month. Some of the participants have had user charges as high as \$100 per month for wastewater alone. Historically communities applied to one agency and tried to leverage that against the other agency.

Mr. Townley reported as priority points are assigned, staff begins the development of the draft Intended Use Plan. This document is provided to communities throughout the state during December. A hearing is generally held before the Clean Water Commission during January. The next Intended Use Plan will go to hearing before the commission at a February meeting. Adoption by the commission is generally done in March.

Mr. Townley explained financings are done in April and November which ties into the commission approval of the Intended Use Plan. An Interim Loan Program has been instituted within the last eighteen months designed to assist communities who were ahead or behind of the semiannual financings. The program is receiving wide acceptance and staff is in a position to do this on a routine basis rather than an as-needed basis.

There has been a little bit of focus by the commission regarding project cost increases. Mr. Townley noted there is quite a bit of time between the time the community begins its project's conceptual design and the actual design. Applications are submitted to staff and the hearing process is completed. Generally it takes the two-year eligibility period for staff to get a project from concept through the design phase. Mr. Townley noted there could be 40 months that evolves between the time the communities start to see the need for a project, start to allocate cost to that project and the time that bids are taken on the final design. He added there are inflationary factors along with the evolution of the project from its concept to the final design that takes place with each project.

Mr. Townley stated the commission has a policy giving staff the authority for increases for loan projects ten percent over the Intended Use Plan approved amounts. Staff has moved forward with many of the financings under this criteria without coming to the commission. This has been a great benefit for staff and Mr. Townley noted staff appreciates the commission's confidence to allow staff to do this.

Mr. Townley noted staff will be mailing the draft 2003 Intended Use Plan at the end of December or early January in anticipation of a February hearing.

Commissioner Perry asked if the programs are marketed to all the communities in the state. She noted concern that some of the smaller communities are not aware of what is available to them.

Mr. Townley replied a Needs Survey is completed for Congress every four years. Estimates with written documentation from the last Needs Survey shows a need for wastewater facilities in Missouri in the amount of \$3.2 billion. The present Needs Survey shows wastewater needs in excess of \$5 billion. Mr. Townley noted just the inflationary impacts from four years ago would be \$3.6 billion. Staff has been more aggressive in seeking out communities and documenting needs. Mr. Townley stated the need is far outweighing the available funds. Staff, as well as the consulting firms and financial advisers, is getting information to the public. The annual marketing packet goes to all communities and

instrumentalities as well as elected officials. In addition, Mr. Townley noted the draft and final Intended Use Plan is provided to communities. He continued that staff also has a booth at the Missouri Municipal League Conference every year. Staff will also probably begin to attend the Missouri Association of Counties annual conference. The department's Technical Assistance Program has opportunity to visit communities earlier than Water Pollution Control Program staff. Regional Office staff has also been expanded to meet with communities on a more regular basis. Mr. Townley noted the biggest problem is how to make the projects affordable for the communities. There is a rapid increase in the cost of service. It is difficult for fixed income individuals to afford the user charges. The willingness and desire is there but coming to grips with the cost is the biggest issue being faced.

Commissioner Minton noted the presentation was very informative. He asked how much money was actually dispersed for the \$3.2 billion need.

Mr. Townley replied he believes staff has done a fairly good job of getting the money out in a timely fashion. The number of applications in the 2000 Intended Use Plan far exceeded what was historically received in the program. Mr. Townley continued applications equaled available funds over the last few years. Just about everyone that applied for the loan program was funded. Mr. Townley stated there is always a waiting list for grant money. Last year there was an \$80 million Contingency List. On the loan list, there was about \$40-50 million on the Forty Percent Grant Contingency List. Mr. Townley noted he believes there will be more of that this year and competition will be more aggressive. The carryover monies from one Intended Use Plan to the next will continue to go down.

Commissioner Minton asked if the \$5 billion need will be met.

Mr. Townley replied Congress has allocated funds since the mid 70s based on the current formula. Missouri receives 2.6038 percent of those federal funds that are made available nationwide. Staff has been challenged to make sure that they are able to document all the state's needs to try to maintain that position. There have been a number of attempts to adjust that formula. As Congress was looking at the budget for EPA this year, it was decided that they were going to look at the funding formula this year. Staff is hoping that the \$5 billion is on par with the 2.6 percent. Arizona is leading the charge and is very pointed in its demands for a revision to the allotment formula. Mr. Townley reported states such as Arizona, California and New Mexico who have had very dramatic population increases are at the mid 70s allocation percentage which is not representative of present day needs. Congress is very receptive to the State Revolving Fund and its needs. The Presidential draft budget sought to cut out \$450 million but Congress reinstated it.

Commissioner Minton asked if some of the increase in need is due to the phosphorus treatment or simply due to more communities having greater needs along with inflation.

Mr. Townley replied the biggest percent increase was in nonpoint source and phosphorus is a component of that. Restoration of abandoned mine lands and water quality issues is a big area. Mr. Townley continued that there are a number of other nonpoint source, nonagricultural components that go into that. Staff has a better handle on the septic tank program along with the deep well program in the Joplin/Neosho area. Mr. Townley concluded that all of these things, plus inflation, and having a better handle on TMDLs and community needs play into this.

Chairman Herrmann noted Commissioner Hegi had mentioned a \$2 million grant to Kimberling City and last evening he heard on the news that there is a \$2 million grant coming to Boone County. These grants are separate, federal grants and the department will play a role in administering them but they do not come out of the allocated money. Chairman Herrmann asked for further explanation.

Mr. Townley provided a chart reflecting funding recently allocated to the Clean Water State Revolving Fund, the Drinking Water State Revolving Fund and the Special Grant projects. He noted staff refers to these as the Special Infrastructure Grant Program. It is from monies allocated to that program that the phosphorus funds and some other community funding has been made available over the last few years. Congress has provided a small increase in the Clean Water State Revolving Fund program over last year and \$1.35 billion will be received nationally. \$850 million will be available for the drinking water program. There will be \$559 million made available under the special grant program. \$500,000 will be available for a water quality study in the Peruque Creek watershed. \$2 million was provided to the West Bottom areas of Kansas City; \$250,000 to the Two Mile Prairie area in Ashland; \$1,500,000 to Lebanon; \$400,000 to Bates County; \$1,500,000 to Camden County; \$1,500,000 to Cape Girardeau; \$2 million to the City of St. Louis Metropolitan St. Louis Sewer District; \$2 million to the City of Kansas City; \$2 million to the Table Rock Lake wastewater initiative; and \$585,000 to Clarence Cannon Wholesale Water Commission. Mr. Townley noted this grant program is a 55 percent federal grant program. These communities will be receiving about 97 percent of the indicated funds. Three percent will be used for staff to administer the program. Local funds of 45 percent will be needed to match the federal funds. Mr. Townley stated the State Revolving Fund could not be used as a match to these grants until last year.

Final Action on Branson West Variance Request

Mr. Laux, Water Pollution Control Program Permits Section, reported the commission voted to preliminarily approve the Branson West variance request at its September meeting. No comments were received during the public notice period and Mr. Laux requested the commission take final action today.

Chairman Herrmann noted he is confused about Branson West being under the Special Infrastructure grant and the variance request they submitted.

Mr. Laux replied Branson West is receiving \$1,020,250 from the 55 percent federal infrastructure grant and \$463,750 from state funds to provide the 25 percent match whereas the total grant amount by regulation is limited to \$500,000. Branson West is above this amount so they are asking for relief from this limit.

Chairman Herrmann noted the Special Infrastructure grants are not included in state funds so the \$483,000 is still below the \$500,000.

Ann Crawford, Water Pollution Control Program Financial Services Section project coordinator, stated the money is federal money. There is no special regulation that the money has been run through. Ms. Crawford noted this same action has been taken on several other communities already funded. Staff took an existing regulation and funneled this federal money through to avoid having to make a special regulation just for this money. The 55 percent state grant regulation was used to move this money through. In order to use that regulation, staff made some stipulations, one of which was that the amount was limited to \$500,000. Engineering was also not eligible under that regulation but staff wanted to make that eligible for this federal money.

Chairman Herrmann noted the commission has not approved any other individual special infrastructure grants.

Ms. Crawford noted variances were approved for other communities in this same situation.

Mr. Laux commented that the commission was given a choice on the first six variances that were approved. They could either been done through variances or a rulemaking would have to be done. The commission agreed that the existing rule should be used and variances would be approved rather than have a rule that will be in effect for only a short period of time.

Ms. Crawford added that Fordland and Seymour will also be requesting a variance.

Chairman Herrmann noted the 55 percent grants have not been used for years.

Ms. Crawford noted that is correct but the regulation is still in effect and can be used. Since it takes about a year for a rule to become effective, and this is one appropriation from the federal government, the money can be given to the communities much faster through a variance.

Chairman Herrmann noted the regulation referenced on the variance application is not the old 55 percent grant program.

Ms. Crawford noted 10 CSR 20-4.021 is the 55 percent grant regulation.

Commissioner Perry noted staff was not aware of the status of the project at the last meeting.

Ms. Crawford replied Branson West has applied and they are eligible. This is consistent with the other variance approvals.

Responding to Commissioner Perry's question, Ms. Crawford stated staff anticipates Fordland and Seymour will request a variance as well as Highlandville.

Commissioner Minton asked how much money is still available from this federal money.

Mr. Townley stated \$497,688 remains.

Commissioner Perry noted it seems to be arbitrary and capricious to grant the first six and not grant the remaining requests.

Chairman Herrmann noted there is somewhat over \$one million remaining for Fordland and Seymour.

Ms. Crawford noted a balance of \$750,083 was carried over for Branson West. Some increases in bids have occurred and some has been taken back as in Exeter. Staff is working with these communities to move their variance requests along.

Commissioner Hegi moved to **approve the variance request for Branson West** as recommended by staff; seconded by Commissioner Minton and unanimously passed.

Commission Action on Preliminary Staff Recommendation Regarding Sycamore Springs Mobile Home Park Variance Request

Mr. Laux reported staff recommendation at the September meeting was to deny the request. One of the reasons staff recommended denial was due to the fact that Mr. Stieren probably does not constitute a continuing authority under commission rules. This was due in part to connections made to his facility by an adjacent subdivision. These connections were subsequently moved to a facility that did not have a permit and had to be reconnected to Mr. Stieren's plant until noncompliance issues at the other site can be addressed. Mr. Laux again recommended denial due to the uncertainty of who actually owns the facility and that it does serve others besides the mobile home park.

Deborah Neff, Assistant Attorney General, reported a Circuit Judge in Jefferson County entered a Consent Preliminary Injunction. This injunction is in effect until someone applies for it to become permanent or someone requests a hearing and it is contested. This document states that the defendant shall withdraw without prejudice the application for variance and for an operating permit now pending before the Missouri Clean Water Commission. This document was signed on October 24, 2001 with all parties agreeing to withdraw the variance.

Ms. Neff stated the commission can vote to deny the variance request based on this order or can make a ruling that this is a matter that is moot and no longer needs to be ruled on based on this order.

Commissioner Perry asked if the request for variance has formally been withdrawn.

Ms. Neff replied nothing had been received when she last checked. She noted she can ask that Sycamore Springs formally withdraw pursuant to the court order if this is what the commission would prefer.

Commissioner Perry asked how the commission got a copy of the court order.

Ms. Neff replied she was provided a copy by the House Springs Sewer Company. She continued that she has been waiting to receive something from opposing counsel.

Chairman Herrmann noted since this is a court order it would seem opposing counsel needs to be contacted for the documentation the court has ordered.

Ms. Neff indicated she will contact opposing counsel.

Commission Action on Preliminary Staff Recommendation Regarding Glaize Creek Variance Request

Mr. Townley reported the Glaize Creek Sewer District has applied for financing in the amount of \$3.5 million for wastewater treatment improvements they are doing within the sewer district. This project was financed outside the State Revolving Fund and staff is trying to fit it into this area. Mr. Townley stated the project had only been advertised for 24 days instead of the 30 days required in commission regulation. A variance from the regulation has been submitted by the sewer district. Representations were made to staff that the advertisement had been forwarded to the local newspaper for publishing in the later part of April 2000 yet the request for bids was dated in the middle of May. Staff requested a certification from the newspaper that they did receive it as represented by the sewer district and that it was their error that it was not published timely. This documentation has not been received. Mr. Townley recommended denial of this variance request.

Chairman Herrmann stated the district did not post plans and specifications in any of the plan houses that are available in the metropolitan area. He noted he is not as concerned with the length of advertising time as he is with the deficiency in making plans and specifications available to all contractors who use these plan houses when they review.

Mr. Townley noted present regulation language does not have a definition of plan room. A change to this will be proposed during a future regulation modification.

Commissioner Greene asked what will happen if the commission denies this variance request.

Mr. Townley responded the project is done. This request is made in order for staff to make a decision on whether or not they will be able to access the State Revolving Fund to refinance their project with lower cost financing. Everything that has been bid and advertised to date would not be eligible for the State Revolving Fund. If other projects move forward, funding will be available.

Responding to Chairman Herrmann's request, Mr. Townley read part of the staff recommendation: "Should the commission decide in favor of this request, staff believes considerable staff, commission and attorney general's office time will be needed in the future to address both requests for shorter advertising periods and challenges from potential or unsuccessful bidders. Staff does not believe such time would contribute to our water pollution control efforts."

Commissioner Perry noted she believes the commission will be setting a terrible precedent for something that doesn't seem to serve any purpose.

Mr. Townley stated in a refinancing situation many of the EPA criteria do not apply. In this situation, the commission regulation says 30 days. Staff can bypass or set aside a lot of the EPA requirements for the program but in this instance there is a commission regulation that establishes a benchmark that they missed.

No one was present from the sewer district.

Commissioner Perry noted that they had not done anything wrong since they were seeking private financing but what they did does not qualify them for public financing. They are now seeking public funds because they are less expensive.

Mr. Townley noted their financing was probably in the 6 percent range and the November closing was 1.78 percent.

Commissioner Minton asked if they were made aware that their application was in error and they chose to do nothing about it.

Mr. Townley responded there is no representative here and he received no information from them. He noted normal business procedure is to notify the applicant when an issue like this arises.

Commissioner Greene moved **to accept the staff recommendation to deny the Glaize Creek Sewer District variance request**; seconded by Commissioner Kelly and unanimously passed.

Commission Action on Matters To Be Referred to the Office of the Attorney General

Avondale Heights

Mr. Mohammadi reported the Avondale Heights Subdivision is a 98-acre residential development with 89 lots owned by Tom Johnson Construction (TJC) in St. Charles County. TJC is authorized to conduct land disturbance activities at the site by Missouri State Operating Permit #MO-R102459. It has been referred to enforcement because Best Management Practices (BMPs) have not been maintained at the site.

During a complaint investigation in July 2000 it was discovered that the only sedimentation basin on the property was not being properly maintained and sediment had been allowed to enter an unnamed tributary of Dardenne Creek and a private downstream lake. As a result, a Notice of Violation was issued in July 2000.

During another complaint investigation in June 19, 2001 it was discovered that some silt fences were overtopped by sediment and the sedimentation basin was again not being properly maintained. A second Notice of Violation was issued on June 27, 2001 for these violations. The department offered to settle this matter out of court, but after limited negotiations the responsible party indicated that they would prefer to seek legal counsel and contest the department's assertions in court.

TJC entered into a Settlement Agreement with the department on November 30, 2000 to resolve violations at a previous development called "The Savannah Tract." The violations stemmed from land disturbance activities at the site. A term of the Settlement Agreement stated that TJC agreed to abide by the Missouri Clean Water Law at all future development projects. Not only is the developer in non-compliance for the above-mentioned violations, but they are also in violation of the previously executed Settlement Agreement.

Since this developer did not avail himself of the opportunity to settle this matter out of court, and the previous Settlement Agreement shows that the developer had knowledge of the regulations, Mr. Mohammadi recommended referral to the Attorney General's Office for appropriate legal action.

David Shorr, representing Tom Johnson Construction Company, reported Mr. Johnson is a residential real estate developer with significant residential real estate development off of Highway K in St. Charles County, O'Fallon, Missouri. He noted that they believe the department has focused on his client alone without any attempts to address upstream contributions coming into the development's sediment control structures. Mr. Shorr noted his client believes upstream contributions are filling the sediment basins and reducing the life expectancy of the sediment basins after any substantial rainfall. He noted they can be expected to control sediment off of their planned area but cannot be expected to suffer a Notice of Violation for the acts of other people who are impacting their project. Sediment ponds and sediment control structures have been built consistent with department protocols.

Mr. Shorr reported a sum they believe more than adequately compensates for their participation in this watershed dilemma has been offered but his client cannot be expected to bear the burden for activities of other developers, road construction, public buildings and other improvements. Mr. Shorr stated the Missouri Clean Water Law does not provide for that type of enforcement relationship. He continued they believe penalization has already occurred in that they have been required to build substantial basins in their project areas where others have not been required to do this. Mr. Shorr noted the demand from the department for settlement for the normal movement of material off of their project is exceptional and believe it is unjustified. He stated this is especially true since there is no justification other than that the basins are full. Mr. Shorr stated it is apparent that the department has decided to do an initiative regarding sediments and erosion control in terms of enforcement. He noted that the position of the commission, the enforcement philosophy, and the penalty strategy has not been made public nor has the department equally applied its philosophical position in the direction of the State of Missouri. Mr. Shorr asked the commission deny the request for referral and asked that they direct the department to address upstream erosion for the entire area. He requested that staff discuss with the commission their basis for the enforcement strategy and settlement procedures and that the commission approve the public policy. Mr. Shorr noted he is concerned that these are very specific items based on complaints and not on any other orderly structure with respect to erosion control.

Chairman Herrmann asked where the project is located off of Highway K.

Mr. Shorr said it is several miles off of Highway K in a heavily developing area with a tremendous number of new commercial and new housing developments. He noted this development was done with a storm water management plan completed by an engineering firm.

Commissioner Perry asked if they would not have the opportunity to bring in the other parties as third party dependents if this was turned over to the Attorney General's Office for litigation.

Mr. Shorr responded that could always occur as well as he could continue to negotiate with the commission.

Commissioner Perry asked if that would not give them a better forum in which to have the department to address those other people who are thought to be causing the problem.

Mr. Shorr noted that is a distinct possibility but it puts the burden on his client to be the enforcement mechanism. He continued that he believes it is important to address why they disagree and have not settled.

Mr. Mohammadi provided pictures of the subdivision site and indicated there are no BMPs or erosion control in place.

Commissioner Minton asked how many acres are in the watershed and what percentage of the watershed flows over this from upstream.

Mr. Mohammadi did not have this information.

Commissioner Kelly asked if the department has looked at any of the upstream activities.

Mr. Mohammadi replied with this particular situation, staff knows the site does not have any BMPs thereby not complying with the terms of their permit. They are also allowing discharge from the sedimentation basins that exceeds the limits in their permit. Mr. Mohammadi was not aware of checking upstream of the site. He continued that generally if there is another upstream site that is contributing to the situation, staff tries to eliminate that.

Commissioner Kelly moved to **refer the Avondale Heights Subdivision to the Office of the Attorney General** for appropriate legal action; seconded by Commissioner Greene and unanimously passed.

Dogwood Restaurant and Truck Stop

Mr. Mohammadi informed the commission the Dogwood Restaurant and Truck Stop is located in Booneville, Cooper County. The wastewater treatment facility serving Dogwood is a one-cell no discharge lagoon. The receiving stream for the unpermitted discharges from Dogwood is a tributary to the Lick Branch of Petite Saline Creek. Dogwood is owned and operated by Greis Oil Company.

Dogwood has been issued two Notices of Violation for constructing a water contaminant source without an Missouri State Operating Permit; operating and maintaining a water contaminant source which discharges to waters of the state without a permit; causing pollution of waters of state; and exceeding effluent limits for Biochemical Oxygen Demand and Total Suspended Solids.

Due to the lack of response to the above Notices of Violation, an Abatement Order was issued to Dogwood in May 2000 to resolve these violations. The Order's schedule of compliance contains a timeline for submitting an engineering report, plans, specifications and a construction permit application, completion of construction and obtaining a Missouri State Operating Permit for upgrading the lagoon serving Dogwood. The owner has not completed the corrective actions listed in the Abatement Order. The owner was issued a construction permit to bring the lagoon into compliance by upgrading it. However, the construction permit expired on April 15, 2001 and construction has not yet been completed. The lagoon continues to discharge without a permit. The discharge is exceeding effluent limits for Biochemical Oxygen Demand and Suspended Solids and causing pollution to waters of the state.

Mr. Mohammadi noted it appears that further efforts to resolve the violations of the Missouri Clean Water Law occurring at Dogwood would be futile. He recommended the matter be referred to the Office of the Attorney General for appropriate legal action.

Chairman Herrmann asked if construction was started.

Mr. Mohammadi replied construction was begun.

No one was present representing Dogwood Restaurant and Truck Stop.

Commissioner Greene moved to **refer the Dogwood Restaurant and Truck Stop to the Office of the Attorney General** for appropriate legal action; seconded by Commissioner Perry and unanimously passed.

Rigby Motel

Mr. Mohammadi reported Brad and Brian Rigby own and operate the Rigby Motel in Benton County. On March 10, 1998 a construction permit was issued to build a recirculating sand filter wastewater treatment system to serve the soon to be built Rigby Motel. The construction permit expired March 10, 1999.

In July 1999, an inspection revealed that the motel was built and the wastewater treatment system was in operation, but construction of the system was incomplete. In addition to the incomplete construction of the system, it was clear that the system was not being maintained. Vegetation had been allowed to grow in the sand filter bed and area around the treatment system had not been mowed. The Rigbys were asked to supply an application for an operating permit and have an engineer certify that construction had been completed by September 1999.

Despite further letters on March 6, and November 9, 2000 documenting inspections and the need to correct multiple problems with the facility, no response was received. During inspections in the year 2000, it was documented that the fence around the facility had not been completed, proper signs had not been installed, the outfall had not been designated for sampling procedures, and the facility was operating without a permit. A Notice of Violation was issued on November 9, 2000 for failure to correct the above-mentioned deficiencies and for discharge of sewage sludge to the receiving stream, an unnamed tributary to Duran Creek.

To resolve the violations the department offered to settle this matter through an out of court Settlement Agreement. Mr. Brad Rigby responded that it was the fault of his engineer for not completing the job, though the department has allowed ample time for the owners to acquire the services of another engineer. It is also clear that the system is not receiving proper maintenance or operation. In June 2001 the department conducted a follow-up inspection and discovered that the previously noted deficiencies in construction had still not been completed.

In August 2001 Brad Rigby informed the department during a telephone conversation that they were not willing to settle the matter and that the department should do whatever it is we are going to do. Mr. Rigby was informed that the department would therefore recommend that this case be referred to the Attorney General's Office.

The department has already expended a considerable amount of conference, conciliation and persuasion to resolve the violations of Missouri Clean Water Law at the Rigby Motel, but to no avail. Mr. Mohammadi recommended referral to the Attorney General's Office.

No one was present representing Rigby Motel.

Commissioner Greene moved to **refer the Rigby Motel to the Office of the Attorney General** for appropriate legal action; seconded by Commissioner Kelly and unanimously passed.

Commission Action on September 19, 2001 Meeting Minutes

Commissioner Perry moved to **approve the September 19, 2001 meeting minutes** as submitted by staff; seconded by Commissioner Hegi and passed with Commissioner Greene abstaining.

Consideration of Missouri's Continuing Planning Process

Carol Garey, Water Pollution Control Program Administration Unit, presented the final draft of Missouri's Continuing Planning Process (CPP) and noted any comments received today can be incorporated into the final document.

The CPP was public noticed from July 6 through September 7, 2001 and was available in paper copy and the department's web site. The final document will also be made available by hard copy and on the department's web site. The document is required under section 303 of the Federal Clean Water Act. The ultimate goal of the CPP is to document a comprehensive and efficient water quality management system. Ms. Garey reported combining the Water Pollution Control Program, Soil and Water Conservation Program and Public Drinking Water Program under the Water Protection and Soil Conservation Division will help achieve this goal.

Ms. Garey summarized major comments as follows.

Travis Doll, Environmental Protection & Health Services Coordinator, Johnson County Community Health Services

Comment: I believe the cooperation between the MDNR and MDOH needs to be addressed. I am employed by Johnson County Community Health Services (JCCHS). We contract with MDOH to permit on-site sewage disposal systems. JCCHS cooperates with the MDNR Kansas City Regional Office on a regular basis. JCCHS cooperates with this office in matters pertaining to subdivision guidelines, drinking water quality and NPDES permits. When JCCHS has a complaint that warrants corrective action by MDNR, we refer it to the Kansas City Regional Office. Unfortunately, JCCHS does not always receive correspondence after the referral.

Response: Noted and explained. We will encourage the regional offices to send copies of correspondence to the local health departments on water quality issues when the issue or complaint was originally received from a local health department. It is standard procedure to send a copy of the approval letter whenever a subdivision is approved to the local health department. It is possible that some subdivision approvals were not copied to the local health department under the previous rule that was in effect until March 30, 1999.

James D. Aslakson, P.E., Mechanical Engineer, Missouri Department of Conservation, Design & Development Division (letter):

Comment: As described in Element 5, Memorandums of Understanding and Agreement, there is a Memorandum of Agreement between the departments of Health and of Natural Resources for cooperation on sewage problems written in 1996. We recommend that the Memorandum of Agreement be rewritten so that the Department of Health oversees all wastewater systems with 3000 gallons per day or less utilizing a wastewater stabilization pond and DNR continues to oversee all wastewater systems over 3000 gallons per day.

Response: It is not possible to delegate oversight of wastewater stabilization ponds with flows less than 3,000 gallons per day to the Department of Health because wastewater stabilization ponds are discharging systems and must have a National Pollutant Discharge Elimination System operating permit issued by the department.

Chairman Herrmann noted it might be more expeditious to see if the commission members have questions or comments since they have a copy of the comments and responses.

Ms. Garey noted there are some errors that should be mentioned.

Regarding the comment on 19 CSR 20-3.060(1)(B), staff noted the comment. The Department of Health is changing its regulation.

Commissioner Hegi asked if it is an EPA law requiring permits for wastewater stabilization ponds.

Mr. Clarkson responded there is an exemption in the no-discharge permit rule, 10 CSR 20-6.015, so some small facilities don't have to get permits. The exemption provided is for no-discharge systems under 3000 gallons per day. If someone has a lagoon and will irrigate the water, this process does not have to be followed. Staff is in the process of reviewing how the exemption provision is administered to make it more user friendly. It has been determined that all the regions are not handling this issue consistently. The comment is on target and changes will be made to make it work better.

Commissioner Perry noted this is a tremendous undertaking and asked what the purpose of the document is.

Ms. Garey noted EPA has directed the state to address nine questions and that is why the document has been developed. Information has been added that staff thought might be pertinent. Ms. Garey noted the nine elements explain how staff operates.

Commissioner Perry noted page 36 talks about the Missouri Clean Water Commission suggesting a rule revision to the Class IB CAFOs. She noted she understands these are possibilities and asked why things that might happen are being discussed in the document.

Ms. Garey responded the language could be modified.

Commissioner Perry noted she hoped the document would contain information on what actually is rather than what might be.

Chairman Herrmann stated this document outlines what might happen in the next four years.

Commissioner Perry noted she is somewhat concerned about being told what she will decide when a decision has not yet been made and doesn't recall discussing this.

Commissioner Minton noted he also does not remember a discussion on this issue.

Mr. Clarkson asked about just taking the language out.

Chairman Herrmann noted requiring a comprehensive nutrient management plan is included as a suggestion of something that might be considered before the next revision of the CPP.

Commissioner Greene noted the language could read "considering" rather than "has suggested."

Commissioner Perry noted she was just questioning whether or not it was important. She stated she was concerned that some individuals may consider this the status of future rulemaking.

Ms. Garey noted she can modify the language so that it doesn't appear that this is definitely happening. She noted the document will be updated every year so changes can be made as needed.

Regarding hauling of manure from CAFOs, Commissioner Minton asked if the commission voted on whether or not this would be permitted. He recalled that the commission decided the haulers could not be responsible for what the landowners would do.

Mr. Clarkson noted that language to regulate haulers was taken out when the rule was adopted. He indicated staff was directed to initiate the rulemaking process regarding this and include haulers on a workgroup to discuss the matter. This process did not move forward. The federal government has now proposed new CAFO regulations which look at numerous items including this issue.

Commissioner Perry asked if there was some action with the EPA CAFO rule.

Mr. Clarkson replied the comment period closed and then another document was issued, EPA's Notice of Data Availability, that gives some insight into the direction EPA is going. Staff has until early December (actual deadline is mid January) to comment on this. The process will take until the end of 2002.

Responding to Commissioner Perry's question, Ms. Garey replied there is no requirement to update the document every year but staff will work toward this.

Commissioner Greene moved to **approve the 2001 – 2005 Continuing Planning Process** as submitted by staff; seconded by Commissioner Minton and unanimously passed.

Chip Mill Issue

Mr. Madras, Chief of the Water Pollution Control Program Planning Section, introduced John Knudsen of the Planning Section Nonpoint Source Unit. He noted representatives of the Missouri Forest Products Association and the Department of Conservation are also present to address the commission.

Mr. Knudsen provided the following report to the commission. Missouri has experienced an increase in timber harvest with the increasing demand for fiber to produce paper products. High capacity chip mills have established operations in the Ozark region of the state. There have been as many as four of these types of mills operating at one time in the recent past in various parts of the Ozark region. These chip mills have demonstrated an ability to utilize large quantities of timber. They can utilize almost all of the available timber at a given harvest site. Large-scale clear-cutting and non-selective harvests are common harvest practices used to supply these chip mills with the wood that is processed into chips for production of paper products. These kinds of harvest practices can have adverse effects for the natural resources of the state, including water quality.

Because of concerns expressed by citizens and interested agencies and groups in Missouri, on September 18, 1998 Governor Mel Carnahan made an executive order that established an Advisory Committee to examine and make recommendations pertaining to chip mills and timber harvest in Missouri. Government, industry, and concerned citizen's groups of the state represented this committee. The Governor's Advisory Committee met numerous times over a two-year period and produced a final report dated August 1, 2000. This report contains recommendations for timber harvest in Missouri. These recommendations include the implementation of BMPs for protection of water quality during timber harvest. These BMPs recommendations are based on *Missouri Watershed Protection Practices* published by the Missouri Department of Conservation. This publication identifies areas that need protection and the BMPs that can be implemented to protect these areas for the preservation of water quality during and after timber harvest.

On March 15, 2000, the Clean Water Commission resolved that they would direct the department to refrain from issuing a storm water permit for an industrial wood processing and harvesting operation for a period of 24 months. This moratorium became effective in April of 2000. It was enacted in order to have an opportunity to consult with others and gain better knowledge about the chip mill industry and its impacts on water quality and watersheds. During the same March 2000 meeting, the Clean Water Commission also directed staff to develop a regulatory package which prevents, controls, and abates any new or existing pollution of the waters of the state caused by storm water from industrial wood processing and harvesting operations during the period of the moratorium on storm water permits. In response to this commission action, staff has started the development of a rule for the commission. The purpose of this rule will be to ensure that BMPs are implemented during timber harvest to protect the waters of the state. The Best Management Practices to be included in this rule will be consistent with those recommended by the Governor's Advisory Committee on Chip Mills and the Missouri Nonpoint Source Management Plan. They will also be consistent with those BMPs identified by the Missouri Department of Conservation in their publication referenced earlier in this report. An outline of this rule is included.

As directed by the commission, department staff is seeking input from Forestry Staff at the Missouri Department of Conservation during the early stages of this rulemaking process. A letter has been sent to their Chief of Forestry, Mr. Bob Krepps, requesting a meeting with staff from both agencies.

Mr. Knudsen stated he has communicated with Brian Brookshire of the Department of Conservation and a meeting will be held in early December.

Cory Ridenhour, Executive Director of the Missouri Forest Products Association, reported there is presently only one chip mill in Missouri and there has never been more than two. There have been no new applications for chip mill facilities in Missouri. Mr. Ridenhour

stated the fiber market has pretty much dried up. Canal Wood which was located in the Cape Girardeau area has closed operations because of market pressures, not due to a regulatory issue.

Mr. Ridenhour noted the issue being discussed today is not a chip mill issue but effects the entire wood products industry. The legal and constitutional authority for forests resides with the Department of Conservation and its commission who has been addressing the issue over time. Mr. Ridenhour stated the BMPs booklet is developed in concert with several organizations including the Department of Natural Resources, Missouri Forest Products Association and other agencies that provide research or support for the forest products industry. He noted this is a proactive book that provides guidance to our facilities to do the right thing as far as watersheds and other practices that protect water and other forestry related issues. Making this more of a regulatory document will limit the proactiveness of this document and will become more of a heavily debated issue. Mr. Ridenhour stated the department has indicated they wish to begin a review process but he indicated the association would like to see some things added and developed and possibly made into a more user-friendly book. No evidence has been produced that timber harvesting has caused water quality problems. Mr. Ridenhour stated there has been no research by the Department of Natural Resources since the moratorium was issued. The Department of Conservation has two studies and they are also considering including water quality issues in the MOFEP program. This program takes all type of timber harvest and other environmental issues into consideration. Mr. Ridenhour noted the Department of Natural Resources currently has a difficult time keeping up with permits for these facilities and this will add to the load. He reported the Department of Conservation in their review several years ago for requiring some type of permitting process found it would take 40 FTEs to administer and to enforce which would definitely be a hardship for the Department of Natural Resources. There are no waters in the State of Missouri listed on the 303(d) List for silviculture. There are also none to be listed on the list next year. EPA has dropped silviculture nationally off the 305(b) list for causing water quality problems. There has been a 20 percent reduction in listing of waters because of nationwide implementation of BMPs. Educational programs are in process to educate those dealing with water quality issues from landowners to loggers to industry members. The Professional Timber Harvester Program began in 1997. Loggers are currently being trained in water quality and BMPs and other ways to help improve the environment. The Association initiated several weeks ago an Inconsistent Practices Program which allows anyone who sees a practice they feel is not correct to report through a hot line, the web site or through referrals from other agencies. Mr. Ridenhour noted they hope this will provide public education on what the Forest Products Industry does and educate members and nonmembers on the importance of BMPs. This is part of the Sustainable Forestry Initiative Program that the Association runs in conjunction with the American Forestry Paper Association and the Department of Conservation has also enrolled the state forest lands into that program. As part of the Sustainable Forestry Initiative, chip mills are required to use BMPs on any of their lands. The Missouri Forest Products Association believes the forester and prescriptions they make for a timber stand will be severely handicapped. There is a

major forest health problem which can only be controlled by heavy harvesting to control the spread of disease. The Association is currently working with the Forest Service and the Department of Conservation on trying to find ways to solve this problem.

Mr. Ridenhour recommended the commission take no action because there is no demonstrated water quality problem, permit the continuance of voluntary practices because they are working nationwide, let the Department of Conservation continue its research efforts to evaluate impact on water quality and possibly address the issue if a water quality problem occurs, and the chip mill permit has been taken care of and no new chip mills have come into the state. He noted the Association supports the sustainable forests in Missouri. Most of the Association companies are small to medium sized family businesses.

Commissioner Greene asked if she understood correctly that there are no studies looking at the relationship between forestry and water quality.

Mr. Ridenhour responded that since the moratorium the Department of Natural Resources has not done any studies on the effects of BMPs on water quality that they are aware of.

Commissioner Greene asked if there have been no new chip mills locating in Missouri due to the moratorium and not because of the fact that there is not a need for them.

Mr. Ridenhour replied he does not believe so because state law does not provide the commission authority to issue any moratorium on any type of business. If a company desired to come to Missouri they would apply for a permit and have it denied by the department and have legal standing.

Chairman Herrmann asked if there is a third chip mill in the Joplin area.

Mr. Laux replied he has been to three chip mills in the state and knows of one that is being developed in Sikeston. There is a chip mill south of Neosho that has recently greatly expanded. Mr. Laux continued that staff has notified them that they do not believe the general permit applies any longer and requested they submit a site-specific application and have not yet received a response.

Mr. Ridenhour stated many of the member companies throughout the state do produce some chips from their wood waste that they process for other wood products. The Association encourages them to chip this waste and to sell it out of state which is done for environmental purposes. Mr. Ridenhour noted the chip mill committee did not consider this facility a chip mill. It does process wood waste that is shipped in from other facilities in that area. Determining whether an operation is or is not a chip mill is in the definition. Under the rule, there were only two in the state and now only one exists. Mr. Ridenhour stated he does not have any knowledge of a chip mill coming to the Sikeston area. He noted he would be surprised if one did locate there due to the market.

Mr. Laux stated there are between five and ten acres of whole trees at the site near Neosho. They did previously chip just wood waste but that is not currently the case. Mr. Laux noted the Department of Natural Resources does not have a definition of chip mills.

Mr. Ridenhour reiterated there is no market for chips so the facility has probably been developing stock piles but he cannot speak to that specific facility.

Mr. Laux stated they are sending chips to a paper mill in Arkansas.

Chairman Herrmann noted the commission's briefing material states the moratorium became effective in April 2000 and was enacted in order to have an opportunity to consult with others and gain a better knowledge about the chip mill industry and its impacts on water quality and watersheds. He noted it was intended that the commission should be educated and made knowledgeable on the impacts of chip mills on water quality and what can be done to implement something to improve what may be perceived or actually be an effect on water quality. Chairman Herrmann noted they have requested continually for many months that the commission be brought into a process of education so they can better consider what might be a final action suggested by the department rather than to just be told what the commission should do.

Mr. Madras responded that the department began an intensive monitoring effort at one site. The site changed ownership during this process and the department was no longer welcome to continue the study. The commission was previously provided a summary of ways other states deal with this issue. Staff has not yet had an opportunity to discuss this issue with counterpart agencies.

Chairman Herrmann noted the commission would like to make a decision based on being educated on the subject.

Mr. Madras noted the staff had intended to bring something concrete to the commission but it has not yet come together.

Chairman Herrmann stated one of the original concerns was the effect that clearcutting would have on quality of streams in the area. If there is a land disturbance permit requirement for clearcutting, that was not mentioned in the recommended consideration for storm water control.

Mr. Madras responded the site that was being studied did involve that type of operation.

Chairman Herrmann noted the commission would like to be educated and not directed.

Commissioner Kelly noted she would like to see some education but the commission did direct staff to develop a regulatory package which she would still like to see.

Commissioner Minton asked if it is the intent of the Department of Natural Resources to go through the rulemaking process to develop a procedure for issuing permits for these types of activities.

Mr. Madras responded that is an option but there currently is no recommendation to proceed in that manner. There are many ways to deal with this and the state agencies need to have a grip on the issue. If educational processes are adequate, there would not be a need for a rulemaking.

Commissioner Minton noted two years was ample time to hold a meeting between Department of Natural Resources and Department and Conservation staff. He noted he visited with the Deputy Director of the Department of Conservation last week and expressed his concerns that the commission remains as blind on this issue now as they did two years ago. Commissioner Minton asked if the BMPs discussed are things that have been agreed upon between the agencies. He noted he is uncomfortable with what he has seen take place so far and is equally concerned about the resource protection and impacts on private landowners of the state. Commissioner Minton stated this needs to be worked out quickly.

Mr. Madras noted the departments are in agreement on the BMPs and the BMPs for forestry that appear in the Nonpoint Source Management Plan were written by the Department of Conservation as well as advisors who helped with that plan development process. Mr. Madras stated he believes the agencies are generally together on what really should happen on the ground during these operations. Discussion is more along the lines of how these best management plans can be made to happen on the land.

Commissioner Greene asked if staff is not working on a rule.

Mr. Madras stated the forestry rule outline was developed as a tool for discussion with the Department of Conservation.

Commissioner Perry noted she hopes discussion between the two departments happens soon and she requested a legal opinion as to the statutory authority to any proposed regulations. She noted it's different to regulate the people growing and requiring some permit if it's found there is some real threat to the water. Commissioner Perry stated she has a real problem with the thought of regulating a chip mill for the practices of someone else off-site where the chip mill has no legal authority to control.

Commissioner Minton noted this is a quagmire of unresolved issues. He asked if we are in a position to determine what happened to the Willamette permit.

Chairman Herrmann noted that could be discussed during closed session.

Commissioner Minton asked if the commission is to take some action or issue direction on this issue today.

Mr. Madras responded it was presented as information but staff would appreciate any direction the commission has.

Commissioner Hegi asked if this is a state-wide problem at this time.

Mr. Madras responded the commission does not need to take action on anything now. The general impression is that there are isolated problems across the state from these types of operations. Staff learns of them on a case specific basis.

Commissioner Hegi asked if there isn't a forestry department for the state.

Mr. Madras responded it is part of the Department of Conservation.

Commissioner Hegi asked if they are saying there is a problem.

Mr. Madras replied there have been discussions and there are isolated problems as in any business.

Commissioner Hegi noted he appreciates the information but he does not know what the commission is to do with this issue.

Commissioner Perry noted there is a great variety within this industry that is being called chip mill. She stated clearcutting on highly erodible land is a practice that is not favored. Practices are also going on around Sikeston where they are growing cottonwoods under very controlled conditions to provide a crop with no erosion problems and to equate those is night and day.

Chairman Herrmann noted it is obvious that the commission needs to be a part of the discourse and need some education before they are asked to vote on the issue.

Commissioner Kelly asked how likely it is that Mr. Krepps will respond to the October 11, 2001 letter from Mr. Totten. She continued that this seems to be the problem all along.

Mike Hoffmann, Forestry Division of the Department of Conservation, reported they did respond to the October 11 letter. A meeting had been set up earlier this month that was cancelled because there were problems with schedules. Mr. Hoffmann noted there are concerns related to the statutory authority. The original issue was an on-site storm water permit and expanded to off-site forest management practices. A better legal understanding is needed of who has authority to regulate this. Mr. Hoffmann stated the Department of Conservation has not really functioned as a regulatory agency and does not wish to do so. He noted the department has worked hard to disseminate the BMPs and encourage people to follow those practices. Staff has been monitoring harvesting practices on state owned land to see what impact there is. Longer term studies have been proposed to look more specifically

at water quality dealing with harvesting practices to try to get some of the information that the commission is looking for. Mr. Hoffmann noted it is not a huge problem overall but it can be a problem on specific sites when things are not done properly. He indicated the Department of Conservation does want to work with the Department of Natural Resources and communicate with the Clean Water Commission in terms of what happens with this process.

Chairman Herrmann noted with the exception of Commissioner Minton, other commission members are not familiar with forestry practices and making a sustainable forest. He noted a meeting with the regional forester in Cape Girardeau several years ago was extremely educational in order to make a decision. The problem now is the moratorium ends in April 2002. The question is should this just lapse or should something better be implemented. Chairman Herrmann stated it is incumbent on the Department of Natural Resources and the Department of Conservation to educate the commission in order to decide this.

Mr. Hoffmann noted the moratorium was specifically on the storm water permit and the chip mills are a very small part of the industry and harvesting that occurs in Missouri. He continued that clearcutting is not a bad thing if it's done properly. Mr. Hoffmann reported the department is in the 11th year of a 100-year study but water quality is not one of the issues involved in this study. A steering committee has identified water quality as the number one priority for additional studies but there are budget limitations and they are tied to the studies in place due to lack of funds. This is an issue where possibly cooperation with the Department of Natural Resources would be a way to obtain funds.

Chairman Herrmann asked how many significant saw mills there are in the state.

Mr. Hoffmann replied there are about 400 saw mills in the state but a chip mill produces a lot more waste than a typical saw mill.

Commissioner Perry asked if there isn't sufficient information to determine if there really is a problem.

Mr. Hoffmann responded there was a lot of concern but he does not know if there was anything documented. There can be problems especially in harvesting operations when things aren't done properly. The problems come from the skid trails and the loading zones themselves and not just from having the trees removed. There are very few studies in Missouri and most of those in other states have shown the problem is of very short duration. In Missouri the best study was done in University Forest in the 80s and they saw very little impact at all. Revegetation happens so quickly that any runoff is of very short duration. Mr. Hoffmann concluded that runoff is primarily solids not chemicals or nutrients to any extent but there is not a lot of research.

Commissioner Perry asked if she is correct that this is not a high priority for the Department of Conservation.

Mr. Hoffmann replied it is a high priority.

Commissioner Perry noted two years have passed and no meeting has been held.

Mr. Hoffmann responded dealing with understanding the water quality impacts by harvesting is an internal high priority for the Department of Conservation but that does not necessarily mean they needed to meet with the Department of Natural Resources. The departments do need to discuss possibly combining forces and decide what information is needed and how it can be obtained.

Commissioner Perry asked if it is anticipated there will be some water quality studies done by the Department of Conservation.

Mr. Hoffmann replied the proposal process has just been completed and one study is proposed but it is not yet known if it will be funded. He noted the Department of Conservation has budget woes as do other state departments and have had to make significant cuts this year. It is being pursued and it is a high priority.

Commissioner Greene noted it is interesting there have been no studies in Missouri and asked if they do not consider studies from other states valid.

Mr. Hoffmann responded we are dealing with different topography and soils and many different conditions.

Commissioner Greene stated she thought information could be taken from other studies. She noted there are water quality problems from forestry practices from other nationwide studies and to assume that Missouri is different from all other states is kind of presumptuous.

Mr. Hoffmann replied scientifically there is a lot of difference in terms of how vegetation revegetates into an area.

Commissioner Greene asked if studies have been conducted in areas that are very similar to Missouri such as Arkansas, eastern Oklahoma, Kentucky, and Tennessee.

Mr. Hoffmann stated there have been some studies but based on what has been seen, there is not a lot of significant problems. There are a lot of short-term occurrences. How can doing things properly make a difference is what the Department of Conservation is looking at. Mr. Hoffmann noted this is important to know before regulations are imposed.

Commissioner Greene asked if by short-term problems he means that the sediment comes out of the creek once it's in.

Mr. Hoffmann replied it occurs for a short period of time.

Commissioner Greene stated the sediment has to go somewhere; it does not crawl out of the creek.

Mr. Hoffmann responded the amount is pretty small comparing it to CAFOs, agricultural operations, and from urban development. Just the fact that there are no streams or waterbodies listed due to silvicultural practices indicates that it is not a major problem.

Commissioner Greene noted there are quite a few listed as sediment.

Mr. Hoffmann stated there can be specific problems that can be very critical on certain areas.

Commissioner Greene stated a problem is a problem and they all add up. She added the excuse of no studies in Missouri is not a valid reason for putting off possible regulation or any other action.

Mr. Hoffmann responded the question is how much time, effort and resources do you put into something where you are going to make only a small impact is what needs to be understood. What the problem is, the degree of that problem and how we can effect that problem by doing things differently either by regulation or by practice needs to be determined.

Commissioner Greene stated we continue to let problems occur in the name of research instead of being proactive.

Mr. Hoffmann replied they are being proactive in promoting the BMPs manual and with training loggers.

Commissioner Greene stated she agrees they are being proactive in education. Regulation may not be the answer but any time there is a voluntary program, the problem is not being solved. All the educational efforts are great but putting everything else aside for this sometimes is not the answer either.

Mr. Hoffmann noted they are putting off enacting a regulation that may not have any impact. That's what needs to be understood and that's what they are working toward.

Commissioner Greene stated that's the research excuse again.

Leanna Zweig, Department of Conservation Fisheries Group, stated a lot of the research would fall under the conservation research area that she works for. She stated water research in the fisheries division is a burgeoning area. They have come to realize that they cannot rely on other agencies and groups to collect their data. The first large-scale forestry impacts project just went through the funding process to begin next August. This project sets at \$500,000 for one small watershed to do a study of our forestry cutting practices which have

existing good BMPs. The impacts of forestry in other states is valid research information but in order to enact a regulatory process, Missouri needs to have good information for the areas that will be logged. These research initiatives will address what BMPs will be effective in the Missouri Ozarks.

Chairman Herrmann stated the commission would like to be educated rather than receive guidance.

Summary Report on Permitting Efficiencies

Phil Schroeder, Chief of the Water Pollution Control Program Permits Section, requested the commission make him aware of any comments they have regarding this issue so the way permitting is done can be designed with commission support.

Mr. Schroeder reported the Water Pollution Control Program has been involved with permitting efficiency efforts for a very long time. Over half of the permits issued for wastewater discharges are general permits, most of which are issued within 30 days. Mr. Schroeder stated the permitting efficiency group is trying to find ways to produce the best quality permit in the shortest amount of time. Another part of this effort is to restructure relationships with everyone staff deals with, internally and externally.

Mr. Schroeder reported Missouri has over 12,000 permits in effect. In EPA Region VII, Missouri is far above any other state regarding the number of permits issued. The permit issuance rate continues to increase with about 2,500 permits per year. When Phase II storm water goes into effect this will at least double, and possibly triple, the number of permits that will need to be issued. Permit reviews require between three hours for general permits and up to an average of 40 hours for site-specific permits. This becomes a real resource issue and ways to use these resources in the most economical and most efficient ways need to be found.

Mr. Schroeder reported about 1600 permits exist that have expired on a number of facilities across the state due to various reasons. The number is decreasing largely due to some of the efficiency efforts but mainly because of the resources being put into the effort of issuing permits.

The basic average rate of how quickly staff can issue general permits, construction permits and site-specific permits shows that the bulk of the general permits are being issued within 30 days and that the bulk of the site-specific permits are taking more than 180 days to issue. This means it takes this long on average from the day an application is received to work out all the issues and actually issue the permit.

Nine recommendations on improving how permits are done came out of the Permitting Efficiencies Workgroup. Following the Fee Bill implementation, another work group was created because a timeline was included in the Fee Bill where staff has to process general and

site-specific permits within certain periods of time. A decision had to be made on how to meet the statutory timelines of the Fee Bill. The Fee Bill workgroup came out with 33 recommendations. From the Missouri Show-Me Results Initiative, seven more recommendations were developed. Mr. Schroeder noted all the recommendations are now being considered by the department.

Mr. Schroeder stated seven of the recommendations have been implemented and staff is in various stages of implementing 33 others. Implementation plans are being designed for the seven recommendations from the governor's initiative.

The plans implemented to date came out of the Permitting Efficiencies Workgroup. The first is a completeness check. When an application is received and does not have all the basic elements to do a technical review, the application is returned to the applicant. Steps have been developed to ensure staff meets the Fee Bill timelines. Temporary staff have been hired to help out and a contract has begun with consulting firms to do permit reviews. This has increased the rate of processing permits. Central and regional office staff have created an electronic permitting process so permit writers can write the permit in the format that is almost ready for public notice when it is received in the central office. Regional offices have also been provided access to water quality data that they did not previously have. The permitting process on average was turning out about 50 permits every two weeks. This process now turns out about 100 permits every two weeks. Mr. Schroeder continued from the Governor's office work group, a new application process for general permits will be designed. A permit-by-rule may not be offered but a more streamlined general permit may be offered. Staff is looking at having a general permit where the applicant can go to the regional office and obtain their permit immediately. The pilot project issuing land disturbance permits out of the St. Louis Regional Office has been a success and staff would like to implement this in all the regional offices. Mr. Schroeder stated staff would also like to look at doing this for other general permits that have been protective over the years. Gathering data for the Geographic Information System was attached to the permitting process for convenience. The permit writing staff gather data on longitude and latitude and locational information about where the site is so the data can be loaded into a Geographic Information System. Mr. Schroeder noted it's a worthwhile project but it does not need to be attached to the permit process. Mr. Schroeder stated the Permits Manual contains the guidelines for how permits are issued and on communications between the central and regional offices and has to be updated. Staff wants to increase communication with applicants in order to ensure areas have been covered well with the applicants before the permit is even drafted. Since land disturbance permits is one of the biggest groups issued, staff is looking at a process to allow for automatic termination putting more of the burden on the applicant to notify staff if they still need a permit. Conducting water quality reviews before an application is received is another area to be studied. Many discussions held after an application is received for renewal are about water quality issues that could have been studied and the applicant made aware of prior to the application being received.

Mr. Schroeder stated the Permits Manual revision will take a lot of resources. Currently resources are directed toward the backlog reduction effort which is making good progress so staff is trying to find additional resources to revise the Permits Manual. Some issues will require a legal review and others may require statutory or regulatory changes. Mr. Schroeder noted the perception of decreased professionalism that comes when you try to cut processes down needs to be dispelled. Staff is refocusing their efforts to put those efforts where they are most critical in protecting waters of the state. Overall efforts can be reduced in a lot of areas and more effort can be expended in other areas and come out across the board as being more protective of water quality. Mr. Schroeder noted coordination with regional offices continues to be an issue. As regional offices are challenged to issue permits, staff will need to increase coordination with them to keep them well informed.

Commissioner Minton asked for clarification on the permit database.

Mr. Schroeder responded a tracking system has been developed that tells how many permit applications have been reviewed, how many are in process, where they are in the process, who is in charge of the permit at this time, and eventually it will report on how long it took to do the interim steps and final permit issuance. This will help staff focus on where fixes are needed in the permit review efforts. The system is functional but it is not reliable and it takes a concerted effort to keep the data in the system. Staff is still struggling to enter all the data that is needed to answer all these questions.

Commissioner Minton asked if a checklist is available for an applicant requesting a permit so the applicant knows what is needed in order to have a complete application.

Mr. Schroeder responded this issue has been studied and every time they try to develop a checklist, the permit application is recreated. The regional offices do have a checklist for completeness but staff is reluctant to give this to applicants because they may just focus on that. Staff is trying to instill to all applicants that they need to focus on the application and complete everything on the application. Mr. Schroeder stated anything different would diminish the quality of the application. He noted staff continues to design the forms to make them more user friendly but that is about all that can be done.

Commissioner Hegi asked if staff has considered letting a professional engineer sign off on the permit applications.

Mr. Schroeder noted it has been discussed.

Mr. Clarkson noted the construction permit backlog issue is a very small subset of the permits issued.

Commissioner Minton asked about engineers posting performance bonds on wastewater treatment projects.

Chairman Herrmann stated professional engineers are supposed to practice only within those areas of which they are proficient. He noted accepting something just because it has a professional stamp does not guarantee the submittal is complete.

Commissioner Minton noted you would not send in an incomplete design if a performance bond had been posted.

Chairman Herrmann noted there is no requirement for a performance bond and he was not sure that this could be required.

Robert Brundage stated he is excited about the progress being made in the permitting area. He noted one of the things he's discussed before is that the department should look into granting exemptions to the construction permit requirement for some smaller projects. Missouri requires a construction and operating permit where EPA requires only an operating permit. Missouri's system is much more complex and requires much more staff time.

Mr. Brundage noted that at the last meeting he spoke to the commission about Senate Bill 741 containing a provision requiring the commission to promulgate regulations that shorten the period of time that the department must issue permits. If that time period is not met, the permit fee must be refunded. Mr. Brundage stated he believes the commission should inform the regulated community of its plans regarding this issue even if the December 31, 2001 deadline will not be met. He stated he has also requested from staff any information they have regarding the permit backlog, breaking the permits down into different types of permits, and how long it takes to issue those. This would serve as the foundation for coming up with a plan to promulgate regulations shortening the review periods. Mr. Brundage noted he would like to look at this information on behalf of the Missouri Ag Industries Council. He also stated that he has heard an applicant whose application exceeds 180 days does not automatically get their refunds mailed to them but that the applicant has to ask for the refund. Mr. Brundage noted he believes they should automatically be mailed to the applicant.

Chairman Herrmann stated the commission discussed at the last meeting when the clock should start which was from when a completed application is received, not the from the date the initial application is received by staff.

Mr. Brundage replied he agrees and Mr. Schroeder would know to what extent staff is rejecting applications so the clock never starts.

Mr. Schroeder reported staff intends to address the commission on the statute regarding reducing the timeline on certain types of permits. He noted staff has not come to the commission with this issue previously because staff does not believe they will be making a recommendation to the commission to reduce any timelines at this point. The 60-day timeline for the review of general permits or 180-day timeline for site-specific permits that are received complete is what staff would like to continue to work toward. Mr. Schroeder continued that a recommendation cannot be made at this time due to the process of getting

permitting efficiencies going. Staff does not know what kind of dividends will come from this and how that will impact the number of days it takes to get permits issued. Mr. Schroeder noted he is not aware of any permit that has taken more than 180 days to issue from the time a complete application was received. He noted he would like to know if there are any so fee refunds can be addressed.

Mr. Schroeder stated when the Fee Bill was passed it increased the permit fees and was supposed to provide monies to increase staff. Seven FTEs were included in the fiscal note for that bill. Five of these positions have been filled with two remaining vacant. Mr. Schroeder noted the process of filling positions does take time because you have to go through the process of collecting annual fees for a year before the money is available. The budgetary process then has to be followed so staff has to get the appropriation to spend the money. Mr. Schroeder noted without knowing where we are on those issues, staff cannot define the permit timelines. Staff is working with EPA to adjust federal grants and until this is known, staff will not know how they will be able to use those monies to address the permit timelines. The permit database is functional but it's not reliable so staff is not able to determine from it precisely how long it's taken to issue the permits. Mr. Schroeder stated staff does intend to formalize these thoughts to the commission before the December 31 deadline and discuss at the January commission meeting.

Commissioner Perry moved to **go into closed session** to discuss legal, confidential, or privileged matters under section 610.021(1), RSMo; personnel actions under Section 610.021(3), RSMo; personnel records or applications under Section 610.021(13), RSMo or records under Section 610.021(14), RSMo which are otherwise protected from disclosure by law; seconded by Commissioner Kelly and unanimously passed.

Other

Groundwater Rule

Scott Totten, Interim Director, reported a statute change last year asked the department to look at natural attenuation as a strategy for cleaning up groundwater. A stakeholder group has been working on this for about two years to develop a rule. Mr. Totten stated staff is working to file a Proposed Rulemaking by January 16 to be published in the Missouri Register on February 15. A public hearing will then be held at the commission's March meeting. Mr. Totten reported Mr. Mahfood is committed to holding public meetings in Kansas City and St. Louis between the time of filing and the public hearing. (NOTE: The Proposed Rule was filed December 28, 2001 to be published in the Missouri Register February 1, 2002.)

Commissioner Perry asked to be notified of the upcoming meetings.

Future Meetings

Chairman Herrmann noted the next meeting of the commission is January 9 in the Governor Office Building. Future meetings will be held February 13 and March 19 in central Missouri and May 1 in the St. Louis area.

There being no further business to come before the commission, Chairman Herrmann adjourned the meeting at approximately 4:25 p.m.

Respectfully submitted,

Scott B. Totten
Interim Director